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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	GEN Docket No. 90-314
	)	RM-7140, RM-7175, RM-7618,
Amendment of the Commission's	)	PP-6 through PP-10, PP-12,
Rules to Establish New Personal	)	PP-13, PP-15 through PP-20,
Communications Services	)	PP-26, PP-27, PP-41 through
	)	PP-52, PP-54 through PP-68,
	)	PP-70, PP-72 through PP-78

**PETITION FOR RECONSIDERATION**

By this Petition, pursuant to §1.429 of the Federal Communications Commission ("Commission") Rules, 47 C.F.R. §1.429, Ameritech respectfully asks the Commission to reconsider its denial of Ameritech's Application for Pioneer's Preference<sup>1</sup> in this proceeding. Reconsideration is sought on the grounds that: (1) all of the requirements for an award are completely satisfied by Ameritech's Application, and (2) the level of innovation demonstrated by both the Application and the trial program conducted under the associated Experimental License<sup>2</sup> is greater than or equal to that of any of the three requests upon which a pioneer's preference was granted by the Commission.<sup>3</sup>

<sup>1</sup> Application For Pioneer's Preference of Ameritech, GEN Docket No. 90-314 (PP-45), May 4, 1992 ("Application").

<sup>2</sup> FCC File Nos. 1686-EX-PL-90 and 2318-EX-ML-91.

<sup>3</sup> Preferences were awarded to APC (PP-6), Cox (PP-52) and Omnipoint (PP-58) by the Commission's Third Report and Order, GEN Docket 90-314, adopted December 23, 1993 ("Third Report and Order").

I. Ameritech's Application and Supporting Documentation Satisfy the Requirements For a Preference

The design of Ameritech's PCS trial is based upon a unique Open Network Interface which distributes the required intelligence among base stations, handsets and the backbone serving network.<sup>4</sup> This innovative approach permits service providers to use the Public Switched Telephone Network (PSTN) as a supporting infrastructure, thus taking advantage of evolving Advanced Intelligent Network (AIN) and ISDN capabilities to offer a robust PCS service without either developing or investing in the functionality required for a full-featured service offering.

This particular aspect of the trial insures that use of the PSTN will foster the competitive PCS marketplace which the Commission seeks to create. Since this critical element of the trial design has not been practically demonstrated (nor even, to Ameritech's knowledge, designed on a theoretical basis) by any other preference applicant, the Commission's conclusion that the Application did not set forth "a unique or innovative technology or service proposal"<sup>5</sup> is unsupported by the record.

The unique and innovative nature of Ameritech's PCS trial, including its Open Network Interface, has already been recognized by the United States Patent and Trademark Office ("PTO"), which recently notified Ameritech that it intends to issue Letters Patent on this design.<sup>6</sup> Since the standards applied by the PTO in its

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<sup>4</sup> Application, at 8.

<sup>5</sup> Third Report and Order, at 58.

<sup>6</sup> As detailed in Ameritech's Tenth Quarterly Progress Report, (filed December 6, 1993), Ameritech's Patent Application was based specifically on this innovative concept.

decision regarding whether to provide patent protection involve precisely the same concepts as those to be applied by the Commission in this proceeding,<sup>7</sup> it is unclear how the opposite conclusions can be justified in the instant proceeding. If the intensive search efforts of PTO's highly-trained and technically proficient staff of Examiners has been unable to find any prior developer of Ameritech's unique proposal, the Commission's conclusion that the Application "has not demonstrated how its... development of an open network interface differs from the capabilities of the existing PSTN"<sup>8</sup> should clearly be reconsidered.

II. The Level of Innovation Demonstrated by Ameritech Meets or Exceeds That Shown by the Successful Applicants

The Commission has concluded that "APC, Cox and Omnipoint have led the way in developing specific PCS services and innovative system designs or components."<sup>9</sup> While the innovative aspects of each of these three applications is arguably sufficiently important to merit the award of preferences, they are no more significant to the development of PCS than the creative approach developed by Ameritech and demonstrated by its extensive program of experimentation.

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<sup>7</sup> A patent will be awarded by the PTO to one who "invents or discovers any new and useful process... constituting a nonobvious advancement on the prior art" (see, generally, 35 U.S.C. 101-103). The Commission's parallel standards require that a successful preference applicant must demonstrate, inter alia, that it has itself "developed the capabilities or possibilities of the service or technology or brought (it) to a more advanced or effective state" (47 CFR 1.402; see also Third Report and Order, at 34).

<sup>8</sup> Third Report and Order, at 59.

<sup>9</sup> Third Report and Order, at 5.

Specifically finding that "while APC was not the first to suggest the 1850 - 1990 MHz band for PCS, APC's studies focused attention on sharing this band,"<sup>10</sup> the Commission nonetheless elected to grant APC's application on the basis that it "developed and demonstrated technologies that facilitate spectrum sharing...."<sup>11</sup> Given this liberal approach to APC's claims of innovation, denial of Ameritech's application seems especially unwarranted. Although others may have previously suggested use of the PSTN as a PCS backbone network, Ameritech is indisputably the first to design and develop -- and, indeed, to successfully implement -- the concepts for the PSTN functionality to support PCS offerings by multiple providers.

The Commission decided to grant the application of Cox on the basis that, inter alia, it had demonstrated innovation by "initiating a phone call over its system and interfacing PCS microcells with copper, fiber, and hybrid copper/fiber cable plant."<sup>12</sup> Although the first call placed over Ameritech's PCS system did not receive nearly the same level of press coverage as Cox's now-famous "first call", Ameritech's call also used a complex configuration of hybrid plant facilities. In addition, however, Ameritech continued on to complete hundreds of thousands of calls during its extensive market trial, thus demonstrating the capability of its design to support a robust, feature-rich commercial type PCS offering. If completion of a single voice conversation, as part of a staged demonstration, warrants a preference, surely a two-year market trial, which involved four levels of service offerings and hundreds of paying users, should be worthy of serious consideration as well.

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<sup>10</sup> Ibid., at 14; emphasis added.

<sup>11</sup> Ibid., at 5.

<sup>12</sup> Ibid., at 21.

Omnipoint's preference application was based, in part, upon "design and development of a base station interface that is compatible with advanced features of the PSTN."<sup>13</sup> Based on its ongoing interaction with Omnipoint's design and development staff in the course of its PCS trial, Ameritech confirms that Omnipoint's system design does include such a PSTN interface. Ameritech is, in fact, the party responsible for developing and implementing the PSTN side of this base station interface.<sup>14</sup> As detailed in its Application and throughout its Quarterly Progress Reports, Ameritech's efforts have spanned the period from the inception of this idea through its deployment and implementation in a mass market trial of advanced PCS services. If attaching Omnipoint's equipment to the radio side of this interface is evidence to support a preference,<sup>15</sup> it is manifestly unfair to reject Ameritech's parallel efforts which were responsible for extending from the PSTN these very "advanced features" which Omnipoint's system implemented.

### III. Conclusion

Ameritech's Application demonstrates the required level of innovation and satisfies the rules by which preference awards are determined, and the efforts of Ameritech clearly equal or exceed the level of innovation claimed by the successful

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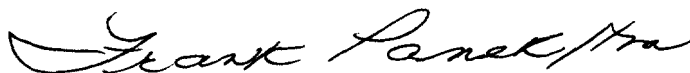
<sup>13</sup> Ibid., at 23.

<sup>14</sup> Application, at 10.

<sup>15</sup> Ameritech continues to support the award of a preference to Omnipoint, as explained in its June 10, 1992 Comments on the Commission's Tentative Decision and Memorandum Opinion and Order, GEN Docket No. 90-314, 7 FCC Rcd 7794 (1992).

applicants in this proceeding. For these reasons, the Commission should reconsider its denial of a pioneer's preference to Ameritech.

Respectfully submitted,

A handwritten signature in cursive script, reading "Frank Panek".

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